

# **EXHIBIT “A”**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
SITEONE LANDSCAPE SUPPLY, LLC, : 23-cv-02084-GRB-SIL  
:  
Plaintiff, :  
:  
- versus - : U.S. Courthouse  
: Central Islip, NY  
NICHOLAS GIORDANO et al., :  
: March 26, 2025  
Defendants : 2:37 p.m.  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING  
BEFORE THE HONORABLE STEVEN I. LOCKE  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

**For the Plaintiffs:**

**Kevin P. Mulry, Esq.**

Farrell Fritz, PC  
400 RXR Plaza  
Uniondale, NY 11556

**Matthew Adler, Esq.**

Troutman Pepper Hamilton  
Sanders LLP  
3000 Two Logan Square  
18th And Arch Streets  
Philadelphia, PA 19103

**John Sikes Gibbs, III, Esq.**

Troutman Pepper Hamilton  
Sanders LLP  
600 Peachtree Street, N.E.  
Suite 3000  
Atlanta, GA 30308

(Appearances continue on next page)

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61 Beatrice Avenue  
West Islip, New York 11795  
RL.Transcriptions2@gmail.com

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**APPEARANCES CONTINUED**

**For the Defendants:**

**Thomas A. Bizzaro, Jr., Esq.**  
Law Offices of Thomas A.  
Bizzaro, Jr., P.C.  
133C New York Avenue  
Huntington, NY 11743

**Michael C. Mule, Esq.**  
**Robert Milman, Esq.**  
Milman Labuda Law Group PLLC  
3000 Marcus Avenue, Suite 3W8  
Lake Success, NY 11556

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1 THE CLERK: All rise. Calling case 23-cv-2084,  
2 *SiteOne Landscape Supply, LLC v. Giordano et al.*

3 Counsel, please state your appearance for the  
4 record.

5 MR. GIBBS: Good afternoon. This is Evan Gibbs  
6 on behalf --

7 THE COURT: The mic is not on.

8 MR. GIBBS: Good afternoon. This is Evan Gibbs  
9 on behalf of SiteOne Landscape Supply, LLC.

10 MR. ADLER: Good afternoon, your Honor.  
11 Matthew Adler also on behalf of SiteOne.

12 MR. MULRY: Kevin Mulry from Farrell Fritz also  
13 for SiteOne. Good afternoon.

14 THE COURT: Good afternoon.

15 MR. MULE: Good afternoon, your Honor. Michael  
16 Mule from Milman Labuda Law Group, PLLC for the  
17 defendants.

18 MR. MILMAN: Robert Milman; Milman Labuda Law  
19 Group, for the defendants.

20 MR. BIZZARO: Good morning, your Honor. Thomas  
21 A. Bizzaro, Jr. I just filed a notice of appearance.  
22 I've joined the party for the defendants. Thank you for  
23 having me.

24 THE COURT: Good luck to you. Well, good  
25 afternoon, everybody. Please be seated.



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1           THE COURT: It has to be -- well, I'm sorry.  
2 Let me continue. I'm envisioning that you'll assert a  
3 privilege, the work product doctrine, with respect to  
4 some of it. You will then provide me with those  
5 documents and I will review them and will determine  
6 what's privileged and what's not because my view and  
7 lawyers' views are not always identical when it comes to  
8 that, with a log. It's just that my experience reviewing  
9 logs is even though it's made with the best intentions  
10 are never sufficient to explain what the heck the  
11 document actually is. It just doesn't.

12                           (Pause in proceedings)

13           THE COURT: Okay. That's 195. So the last  
14 thing we have is 193 which is really 189. That has  
15 moving parts or several parts to it, so I'd like to sort  
16 of break that out into its constituent parts.

17           Okay. The first part, and I'm just looking at  
18 what you would call the prayer for relief, is produce  
19 text messages from 13 custodians. Right? Let's do it  
20 issue by issue. So Mr. Mule, let's start with that.

21           MR. MULE: Yeah. Your Honor, as far as the  
22 texts, I don't know if it makes sense, would you like to  
23 give like a little timeline and the process for  
24 background?

25           THE COURT: Yes. It's a lot to absorb.

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1 MR. MULE: All right. So look, the objection  
2 over the last seven and a half months since we brought  
3 these issues to SiteOne has been cost and  
4 proportionality. That's basically been their objection.  
5 They're both meritless. And it's, you know, it's telling  
6 their opposition basically makes it --

7 THE COURT: That's one objection or two you  
8 said? Cost and proportionality?

9 MR. MULE: And proportionality.

10 THE COURT: Okay. Keep going then. Got it.

11 MR. MULE: So the objections plural.

12 THE COURT: Okay.

13 MR. MULE: You know, in their opposition they  
14 make conclusory statements as to proportionality but  
15 really that's it.

16 As far as the timeline, as this Court noted at  
17 the last hearing, there is no PSI protocol. There never  
18 was. The parties conducted their own, came up with their  
19 own searches of what was relevant and responsive to the  
20 requests.

21 THE COURT: Did they share that with you? I'm  
22 talking about opposition now. In other words, I  
23 understand they came up with a list of let's just say ten  
24 terms. And did they say to you we're going to give you  
25 these ten terms and you said okay? Or tell me about

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1 that.

2 MR. MULE: That is absolutely false. So what  
3 happened is back in June they did their first production.  
4 And we said this production is totally inadequate.  
5 You've only identified a few custodians. And then the  
6 end of July they provided their own search terms and they  
7 provided responses. And on August 1st, we sent them a  
8 letter and we said look, your own searches addresses only  
9 40 percent of the document requests that we made. It  
10 doesn't even identify a search of 60 percent of the  
11 searches, 70 out of 100 and --

12 THE COURT: It doesn't identify 60 percent of  
13 the searches? What does that mean?

14 MR. MULE: In other words, they came with what  
15 their search terms were.

16 THE COURT: Right.

17 MR. MULE: And they applied -- they put the  
18 request for production to which that particular search  
19 applied.

20 THE COURT: Okay.

21 MR. MULE: And when I counted the requests for  
22 production, I said 60 percent of our request --

23 THE COURT: I see what you're saying.

24 MR. MULE: -- for productions are not even on  
25 here.

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1 THE COURT: So none of those link up with 60  
2 percent of the request.

3 MR. MULE: Correct, correct.

4 THE COURT: Got it.

5 MR. MULE: So in mid-August, that's when I  
6 first requested -- I said well what are your -- we didn't  
7 see any (indiscernible) in your efforts to collect texts  
8 that are responsive to the documents.

9 We had meet and confers from July through early  
10 September. And the process, the way it worked, and we  
11 had agreed to it, was they asked for I'm going to say  
12 about five meet and confers concerning our responses  
13 first. And then we had two days at the end concerning  
14 their responses. So they had first dibs essentially in  
15 coming to us and then we went to them. In mid-September,  
16 we came back to them and said -- and that's docket 189-5.  
17 We gave them a list of -- we said, you know, your  
18 responses are still deficient on all these particular  
19 topics and we identified specific requests --

20 THE COURT: Topics and requests to produce or  
21 just topics?

22 MR. MULE: Yes, requests to produce. So we --

23 THE COURT: No, but I'm saying you linked them  
24 to requests --

25 MR. MULE: I identified the specific numbers.

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1 THE COURT: Okay.

2 MR. MULE: It's 189-5. And I also gave a list  
3 of 24 names. We said we want these custodians searched  
4 for texts as well.

5 THE COURT: Right.

6 MR. MULE: And meanwhile, as you'll recall,  
7 September 11 comes, we get a barrage of motions. This is  
8 like -- there's been over 30 motions by SiteOne here.  
9 They've spent \$2 million in fees since this case.  
10 There's been tremendous motions. Not one substantive  
11 deposition yet or discovery.

12 So by SiteOne's own searches left to their own  
13 devices, they say they reviewed 25,000 documents. And  
14 they have a narrative in here saying we agreed to their  
15 searches. We didn't agree to their search terms. We  
16 basically had meet and confers. They said we'll  
17 supplement some. Let us consider these. You know, maybe  
18 we'll do that. And then they came back, they provided  
19 one other search, updated search term on August 2nd. And  
20 that updated search term was still insufficient and the  
21 subject of the meet and confers and the additional  
22 letters that we sent them for additional meet and confers  
23 that these are not responsive.

24 Then you'll recall in mid-October we were here  
25 and they said we want you to review these specific search

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1 terms and give us a headcount. And we agreed to that.  
2 The Court ordered us to go through that and we did that  
3 exercise.

4 And just to back up, on September 4 in one of  
5 those meet and confers, we specifically said hey,  
6 whatever process we're doing here, there's got to be a  
7 reciprocal process. So if you're requesting it from us,  
8 we expect the same reciprocal fair process as it comes to  
9 our requests.

10 So in October, they did the search terms. We  
11 ran those. We spent tons of attorney hours and time  
12 reviewing and preparing and getting those documents that  
13 were responsive. Meanwhile, while we are getting all  
14 that together, we followed up again in November of 2024.  
15 And this was because they kept making the same refrain,  
16 costs, proportionality, costs, proportion, we can't do  
17 it, it's too much. Even though we spent 2 million in  
18 fees, you know, apparently spending 200,000 reviewing  
19 documents when it comes to evidence we need is too much.

20 So in the event of moving, the desire of moving  
21 the case forward and getting to substance we said look,  
22 we've culled this list down from 24 to 13 and we went  
23 down to 13. And again, they responded but it took them a  
24 month and a half to respond. January 3rd they respond  
25 and their refrain was the same. Costs too much,

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1 proportionality.

2           Then January 17th comes and they say we'll pick  
3 our own ones that we want to produce. These three,  
4 Thistle, Ketter, and Catalano. That was January 17. And  
5 we said wait a minute, this is not what we agreed to. We  
6 agreed to a process. Whatever process we're going to  
7 apply to you was going to apply to us. And we had not  
8 been making progress.

9           So we made the first motion which is 189 and on  
10 February 10th we were before the Court and we right  
11 before that we went through the painstaking task of  
12 making a document with specific searches. And we have  
13 that. It's in the record as Exhibit H. Exhibit H and  
14 Exhibit G, docket 198-7 and 198-8, are really the key  
15 exhibits here.

16           THE COURT: Okay. It's not 198 though.  
17 It's --

18           MR. MULE: I'm sorry 193. Excuse me.

19           MR. GIBBS: I think it's 189.

20           THE COURT: It's 189 I think.

21           MR. MULE: 189.

22           THE COURT: And it's --

23           MR. MULE: Dyslexia I guess.

24           THE COURT: All right. So you're saying  
25 it's -- because when I print it, it doesn't come out

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1 quite the way you say. So it's docket entry -- it's dash  
2 7 and dash 8?

3 MR. MULE: Dash 8. Dash 7, dash 8, which is  
4 Exhibit G and Exhibit H.

5 So you know, at the conference the motion to  
6 compel was withdrawn because there was an agreement that  
7 SiteOne would compromise. We agreed, you know, they  
8 agreed that they'd run the search terms that we provided.  
9 So I took this as the same process that we went through  
10 in October. And we specifically said to the Court that  
11 by the end of the week we would provide a further  
12 limitation as to the number of custodians. And we said  
13 somewhere between 13 and three, and greater than three,  
14 because they agreed to three previously.

15 THE COURT: Which leaves ten.

16 MR. MULE: Which leaves somewhere between 13  
17 and --

18 THE COURT: All right. So leave the three out.  
19 That leaves ten others.

20 MR. MULE: Well ten others. Correct.

21 THE COURT: Right. So of --

22 MR. MULE: And then so --

23 THE COURT: Wait, wait. Let me ask you a  
24 question and then you can continue.

25 MR. MULE: Yeah.



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1 THE COURT: Did you come up with the --

2 MR. MULE: I did.

3 THE COURT: Who were they?

4 MR. MULE: So on February 14 we gave them a  
5 list of ten and those ten were --

6 THE COURT: Well, that was the remaining ten  
7 then, all ten.

8 MR. MULE: No, no, because they already agreed  
9 to three of them.

10 THE COURT: Oh, so seven more.

11 MR. MULE: So it's really just seven more.

12 THE COURT: Okay. And who are they?

13 MR. MULE: That was Doug Black. They had  
14 agreed to Catalano already. Gerard Passaro --

15 THE COURT: Wait, wait. I'm looking at the  
16 exhibits.

17 MR. MULE: Yes. Sure.

18 THE COURT: Gerard?

19 MR. MULE: If you look at --

20 THE COURT: Oh, he's number two. Okay.

21 MR. MULE: Yeah. At Exhibit G.

22 THE COURT: Got it. I have it. Who else?

23 MR. MULE: Kevin Peatie is number eight on  
24 Exhibit G.

25 THE COURT: Yes. Who else?

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1 MR. MULE: Phil Sausto who's number three.

2 THE COURT: Yes.

3 MR. MULE: Alex Trama, who is number one. Greg  
4 Thistle they agreed to produce. Jerry Justice, who is  
5 number seven. Joe Ketter, who is --

6 THE COURT: Number 12.

7 MR. MULE: Number 12. And they agreed to  
8 produce his texts.

9 THE COURT: All right. So is that every --

10 MR. MULE: And then --

11 THE COURT: What else?

12 MR. MULE: -- Mr. Brian Kersnowski.

13 THE COURT: Number five.

14 MR. MULE: Number five. And you know, so we  
15 came back and we said seven more. I further compromised  
16 to our position in the interest of moving us forward  
17 again. They came back February 24 too much, costs too  
18 much, proportionality. And you know, so out of these  
19 numbers if you look at Exhibit G, numbers one and two,  
20 Trama and Passaro --

21 THE COURT: Right.

22 MR. MULE: Numbers three and five are  
23 specifically mentioned in the complaint and they filed  
24 declarations in this case.

25 THE COURT: Right.

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1 MR. MULE: You know, your Honor referenced at  
2 pages 41 through 42 at the last hearing about I can  
3 envision a 30(b)(6) and you're going to have the review  
4 relevant information anyway.

5 So as to those, I don't see any basis for not  
6 getting the relevant information on them and pulling  
7 those texts.

8 As to the others, we have specific reasons why  
9 they should, their information should be culled and  
10 relevant information produced.

11 So Doug Black, number four, is the CEO of  
12 SiteOne. Don regularly was in communication with him.  
13 He's the CEO but he's the one that Don communicated to  
14 regarding the operations here. He was a key figure in  
15 terminating Don. Any types of decisions that Mr. Thistle  
16 is going to make, Catalano is going to make --

17 THE COURT: Okay. Now, let me ask you a  
18 question.

19 MR. MULE: Yes.

20 THE COURT: I understand what you're saying.  
21 But with respect to searching the texts --

22 MR. MULE: Yeah.

23 THE COURT: -- how is that done? What is  
24 your --

25 MR. MULE: Okay. So they could do one of two

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1 things. And this hasn't been decided because --

2 THE COURT: But what are you asking for? Let  
3 me put it that way.

4 MR. MULE: Because they haven't agreed to  
5 anything. But we gave them, as Exhibit H, we gave them  
6 that specific --

7 THE COURT: The table.

8 MR. MULE: -- table which gives very -- it  
9 identifies even the allegations to which the particular  
10 request and the search refers to. We gear the requested  
11 terms to particular allegations.

12 THE COURT: Right.

13 MR. MULE: We gear it toward particular claims.

14 THE COURT: I see. So each custodian to an  
15 allegation. That's how you --

16 MR. MULE: That's right.

17 THE COURT: All right.

18 MR. MULE: That's right.

19 THE COURT: Yes.

20 MR. MULE: So we did that. We went through  
21 that task. And really what this comes down to is they're  
22 complaining about cost. Now --

23 THE COURT: No, I got that. You don't have to  
24 repeat it.

25 MR. MULE: Okay. So that's texts. I don't

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1 know if you want me to get into emails which is -- I mean  
2 it's similar.

3 THE COURT: We're going to do -- well how  
4 similar? Because we're going to --

5 MR. MILMAN: I think you should know though on  
6 the costs that they keep raising, only roughly 10 percent  
7 of that cost is to do the search.

8 THE COURT: No, I got it, I got it.

9 MR. MILMAN: Everything else is legal fees.

10 THE COURT: No, I got it. Mr. Milman, Mr. Mule  
11 is doing a good job.

12 MR. MILMAN: I know. Thank you. Sorry.

13 THE COURT: Let him do his thing. I'm just  
14 going to handle this one at a time but if it's basically  
15 the same argument with respect to emails, then --

16 MR. MULE: It is, yeah. And it's really  
17 just -- look, when they did the searches under their  
18 terms, they came up with 25,000. And we said, you know,  
19 60 percent of our requests aren't captured by this. So  
20 we came with these searches. And not surprisingly, they  
21 come back, and that's document 189 -- I think that's 198-  
22 8. Sorry. 189-8. I keep mixing that up.

23 THE COURT: That's the table, isn't it?

24 MR. MULE: You know, that -- they came back and  
25 they said it produces 204,000 documents. But it's no

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1 surprise that the searches that are relevant to the case  
2 to our defense will come up with documents. Basically  
3 we're entitled to a defense and we should be able to get  
4 these documents. They brought this lawsuit.

5 THE COURT: I got all that.

6 MR. MULE: It's been a one-way street so far,  
7 your Honor.

8 THE COURT: I got all that. Okay. Mr. Gibbs?

9 MR. GIBBS: Thank you, your Honor.

10 THE COURT: Let me just say before you get  
11 started, the answer to this question is not you don't  
12 have to do any more searches. So gauge your response  
13 accordingly, please.

14 MR. GIBBS: Yes, your Honor. So I think --

15 THE COURT: And I think I said that before.

16 MR. GIBBS: -- I think that it is very  
17 important to start off with a -- I want to frame first  
18 the basis for these additional requests.

19 So if you read their motion papers, they  
20 specifically say they are seeking additional evidence  
21 about this vendetta lawsuit. That is the thrust of what  
22 they're asking for. They've really listed six different  
23 types of things they're looking for. Specifically,  
24 purchase of the assets, the activities leading up to  
25 Don's termination, the decision to terminate Don, the

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1 investigation into Nick's activities, the decision to  
2 terminate Nick, and the decision to commence this  
3 lawsuit.

4 So it's a really narrow universe of topics that  
5 they're seeking this additional discovery about. So I  
6 just want to frame that up first --

7 THE COURT: Okay.

8 MR. GIBBS: -- because that's the focus of this  
9 vendetta lawsuit theory.

10 Now, I want to walk through -- because I'm  
11 sorry, your Honor, but when we went through this process  
12 last year, we met and conferred for hours. I mean it was  
13 something like 14 or 15 hours. We met and conferred over  
14 each other's discovery responses and what we were going  
15 to do.

16 And the letters, I've attached them as exhibits  
17 where I expressly tell them -- the August 2nd letter I  
18 think is the most important one.

19 THE COURT: Okay.

20 MR. GIBBS: And that one specifically says hey,  
21 here are our discussions, our joint discussions up to  
22 this date. You proposed, you defendants, you proposed to  
23 us 15 additional search terms. So at the end of July we  
24 sent them our search terms. And it's not just search  
25 terms. It was a chart that said here's the search terms,

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1 here are the requests for production to which they are I  
2 guess seeking materials for. Here are the custodians  
3 that are being search. Here are the hit counts for these  
4 particular search terms. We initially sent them -- we  
5 initially ran 12 separate sets of search terms, included  
6 all that information, and we sent it to them I think it  
7 was the last week of July.

8 We then had another meet and confer over that  
9 where we discussed additional terms. They sent us 15  
10 additional search terms. We ran all of those search  
11 term's and we sent it back to them. And we said, I mean  
12 I can quote it from the letter, we said look, 12 of the  
13 search terms that you sent us, that gives us an  
14 additional 4,300 pages --

15 THE COURT: This is the August 2 letter?

16 MR. GIBBS: Correct, your Honor.

17 THE COURT: Okay. What page number?

18 MR. GIBBS: Page 5.

19 THE COURT: Okay.

20 MR. GIBBS: Page 5. And I said that gives us  
21 an additional 4,300 pages of documents, 12 of your search  
22 terms. But the other three, those three alone because I  
23 think it was, you know, one was for like just Don I think  
24 was one of the search terms.

25 THE COURT: When you say 12,000 you're



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1 referring to the 11,904 number in the letter?

2 MR. GIBBS: I'm sorry, say that one more time,  
3 your Honor?

4 THE COURT: When you say 12,000, you're  
5 referring to this below the point B where it says 11,904?

6 MR. GIBBS: No, your Honor. So the 12 I'm  
7 referring to, so they gave us 15 total search terms.

8 THE COURT: Right.

9 MR. GIBBS: And we ran those and we agreed to  
10 review the documents that were responsive to 12 of those  
11 search terms.

12 THE COURT: Oh, I see. Okay. Sorry.

13 MR. GIBBS: Yeah. And that total number of  
14 documents that was responsive to those 12 search terms  
15 they gave us, it was 4,300 documents. And we said okay,  
16 we will review those additional 4,300 documents in  
17 addition to the 20 something, 30 something thousand that  
18 we're already respond -- that we were already reviewing.

19 And we said specifically hey, but these three  
20 that you gave us, these other three, that's almost 58,000  
21 additional documents. That's not proportional or  
22 reasonable, so we're not agreeing to review those. They  
23 took no issue with that. We invited them. Hey, if you  
24 got other search terms you want us to run, if you've got  
25 questions about this -- and we included with this, just

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1 to be clear, we sent them the full hit count report that  
2 had all 12 of ours, all 15 of the ones that they  
3 proposed. We sent that to them. It's like as plain as  
4 day.

5 And then we proceed, we go and review all those  
6 documents. It totals up to a little over 35,000  
7 documents. So we collected email data for 24 different  
8 people and we ran these search terms across those 24  
9 people in various iterations. We reviewed those 35,000  
10 and change documents. We produced more than 1,000  
11 documents from the emails. We started producing in June.  
12 We finished our last email production September 6 and we  
13 finished our non-email production on October 18th.

14 So after that on November 27th, that's when  
15 they come to us and say hey, you applied, and this is a  
16 quote, "You applied limited search terms to a limited  
17 number of custodians." And that is attached as Exhibit 3  
18 to our motion, docket 196.

19 And so they came to us and in that particular  
20 email they demanded that we run 15 additional terms over  
21 a period of more than two years and across 13 custodians.  
22 Three of the folks who were included in that group are  
23 new custodians for whom we had not collected data because  
24 we did not identify them as relevant. So they were also  
25 asking not only run additional search terms but collect

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1 email data from three additional people.

2           So we responded in the two separate letters,  
3 Exhibits 4 and 5 to our motion and we explained in really  
4 great detail why the requested searches were not  
5 reasonable, why we were not willing to do this. It was  
6 going to cost -- we ran the hit counts, sent them the hit  
7 counts, and it was going to be a total of almost 18,000  
8 documents. And we said hey, that'll take, you know, 250  
9 hours of attorney time to review, that'll be more than  
10 \$100,000. Considering everything that we've already done  
11 including running all the search terms that you asked us  
12 to do which we reviewed the documents for, we don't think  
13 it's unreasonable for us to have to do this. There are  
14 18,000 more. When it's really untethered from, you know,  
15 any specific relevance.

16           And so that was -- so we explained that in  
17 January. We went back and said hey, look, if there's  
18 some way to narrow it or something like that, please let  
19 us know. They did not respond. Instead, the night  
20 before the February 10th hearing they filed their motion  
21 to compel. Attached to that motion, those search terms,  
22 your Honor, that is the first time we ever saw them. And  
23 that chart, I will say Exhibit H, your Honor, that is 25  
24 pages, 39 separate search terms or search parameters that  
25 they've asked us to run. It's only increased. Every

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1 time they ask us to run more searches, the number gets  
2 bigger.

3 THE COURT: Well, but now the number is getting  
4 smaller because they've come down to seven custodians.

5 MR. GIBBS: No, your Honor. No, your Honor.  
6 So I'm only talking right now about email. This is only  
7 email. Everything I've just said to you --

8 THE COURT: Okay.

9 MR. GIBBS: Everything I've said so far is only  
10 email.

11 THE COURT: Okay. We were talking about texts  
12 though.

13 MR. GIBBS: We --

14 THE COURT: I asked Mr. Mule about texts, start  
15 with texts.

16 MR. GIBBS: Well, I think we've gotten in -- so  
17 the text messages sort of come a little later. And I  
18 think what Mr. Mule said, he addressed texts and emails.

19 THE COURT: Well, then he sort of said the  
20 email argument is the same, but you're drawing a  
21 distinction between the two, which is okay. I'm just  
22 trying to understand it.

23 MR. GIBBS: Yes, your Honor. I think this  
24 provides the context and the timeline with the text  
25 messages.

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1 THE COURT: Okay.

2 MR. GIBBS: So the demands again -- so February  
3 7th we get this expanded set of search terms for the  
4 email data which we've never seen. So this expanded from  
5 15 specific search terms that they sent us on November  
6 27th now to 39. So it almost tripled the number of  
7 search parameters they wanted us to run with no  
8 explanation. Well, we had already sent hit counts for  
9 the original 15 and said what more? This is too much.  
10 Explain why you need this and let's see if we can make it  
11 something smaller. And instead, they sent us something  
12 that's almost three times as large.

13 So we get that. We had the hearing on February  
14 10th. We adjourned. We agreed that we would run the hit  
15 counts, provide that data to them, which we did. And so  
16 again, this was just an email. The number of documents,  
17 the number of emails that hit on the search terms, so it  
18 was almost 204,000 documents. To promote it into the  
19 database, host it, review it, produce it would be about  
20 \$400,000. And that is for the 24 custodians for whom we  
21 have already collected email data.

22 And so they're asking for three additional  
23 custodians as well. And to collect the data from those  
24 three people, to run the search terms, the original  
25 search terms and the new ones, that would be about

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1 \$76,000. And so we're talking about just for the emails  
2 we're talking about an additional half a million dollars  
3 to do what they've asked.

4 THE COURT: Okay. My recollection of this  
5 issue the first time we had the motion hearing was that I  
6 certainly raised some concern about there being no  
7 electronic ESI protocol.

8 MR. GIBBS: Yes, your Honor.

9 THE COURT: This has only confirmed my original  
10 thought. And there are two ways to go. One was I was  
11 hoping we could sort of Band-Aid something together to  
12 give a response to this motion.

13 I'm looking at Exhibit H which is the cross-  
14 referencing of custodians to particular requests and it's  
15 not clear -- well, I understand the purpose of it and it  
16 makes sense. It still says well we want documents about  
17 this allegation from this person. That is not an ESI  
18 protocol. An ESI protocol would then have search terms  
19 that could be run. But I don't see that in Exhibit H.

20 MR. MULE: Your Honor, it's in there. It says  
21 additional proposed search terms. It has SiteOne's  
22 terms --

23 THE COURT: Slow down, slow down. Oh, I see.  
24 I see it. Okay.

25 MR. MULE: -- on the -- and then it has the

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1 additional proposed search terms which are the terms that  
2 we requested be run.

3 THE COURT: Okay. And that is (indiscernible)  
4 text?

5 MR. MULE: That's -- what I'm saying is it  
6 could be applied to both because we --

7 THE COURT: Are they both searched the same way  
8 that --

9 MR. MULE: Yeah, exactly. Like they just add  
10 to text and put these search terms, this could be a way  
11 it could be done. You know, for us, they put the burden  
12 on us manually reviewing the texts because they said you  
13 can't, you know, it's hard to get searches. But you  
14 know, they didn't even come back to us with any type of  
15 proposed edits on this or even saying that any of these  
16 were not relevant. They're relevant. They're geared --

17 THE COURT: Okay. Well, I'm not going to talk  
18 about relevance for a moment.

19 MR. MULE: No? Sorry.

20 THE COURT: But okay. Understanding that now,  
21 with respect to the seven custodians, I want to focus on  
22 those. Did you run the counts for those seven custodians  
23 using the terms from the additional proposed terms  
24 column?

25 MR. GIBBS: Well, so your Honor, so do you mean

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1 for emails?

2 THE COURT: Emails, well emails and texts. But  
3 if there's two separate answers, one for each, that's  
4 fine.

5 MR. GIBBS: It's separate, it's separate.

6 THE COURT: Okay. So tell me what's the answer  
7 to both?

8 MR. GIBBS: So the answer for emails is yes, we  
9 have run all of their proposed search parameters exactly  
10 as they asked us to do.

11 THE COURT: Okay.

12 MR. GIBBS: Exactly what's in their chart,  
13 Exhibit H --

14 THE COURT: And so for emails, the number --  
15 what was the total? You said it but tell me again.

16 MR. GIBBS: 204,000 documents.

17 THE COURT: Okay. And then did you do it for  
18 texts?

19 MR. GIBBS: No, your Honor. We did not do it  
20 for text messages.

21 THE COURT: Okay. And text hasn't been done.

22 MR. GIBBS: I did not understand that that  
23 would be an appropriate way. So I'll tell you that for  
24 text messages, for the three that we searched -- and now,  
25 you know, I'll move on to the text message piece. So for



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1 the text messages, we told them last year hey look, we're  
2 agreeable to searching text for a reasonable number of  
3 people and started with the 24. And we said there's no  
4 way. So the conversation was what do you really want?  
5 Like who are you really after here? And the list stayed  
6 at 24 until late last year and then it was culled down to  
7 the 13.

8 And we continued to say look, 13 is still --  
9 that's a lot. And we've already done all these other  
10 things. What's your real list? And they wouldn't tell  
11 us who the real people are.

12 So we selected the three people, the management  
13 people --

14 THE COURT: No, I remember that.

15 MR. GIBBS: Okay. So we made what we thought  
16 was an informed selection of who would be most likely to  
17 have the data relevant to this vendetta lawsuit. The  
18 people who investigated Don and Vic and Nick and actually  
19 terminated them, made the decision to terminate them.

20 THE COURT: And you look at their texts as  
21 well, most of them.

22 MR. GIBBS: So what we did, let me tell you  
23 what we did for them, your Honor. So we got their -- we  
24 collected their text messages, and we got our list of the  
25 26 people. So I guess 27 people. It's all of the

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1 original custodians for whom we collected email data plus  
2 the three other new custodians they proposed.

3 THE COURT: Right.

4 MR. GIBBS: And we got those, those  
5 individuals, and we pulled every single text message  
6 between these three custodians and any of those 27  
7 people. And then we pulled all of those messages and we  
8 manually reviewed every single one of those. I can't  
9 remember the exact number that we reviewed. It was a few  
10 or several hundred. And then we produced the messages,  
11 the relevant responsive messages. We produced those on  
12 March 18th and there were I think we'll just say  
13 approximately 100 text messages. And so that's the  
14 process that we went through with the text messages.

15 THE COURT: Okay. Let me ask you --

16 MR. GIBBS: So we did not run search terms in  
17 the text messages. We reviewed them manually just like  
18 they did.

19 THE COURT: Okay. Let me ask you a question,  
20 Mr. Mule. A lot of the time frames in your Exhibit H,  
21 the date range, it seems to me as a matter of logic that  
22 there was probably a certain number of months window that  
23 would be the hot time, for lack of a better phrase, where  
24 things were going on. It seems to me that one way to  
25 manage it might be to limit the time frame.

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1           For example, I'm making up dates now, but if  
2 the hot four months was January 1 to April 1, I guess  
3 that's three months, if they did the search and there  
4 were no texts responsive from that window collected in a  
5 subsequent text being responsive would approach zero, it  
6 would certainly go down. Right?

7           So perhaps the one way to make this more  
8 manageable is to (A), limit the time frame because I'm  
9 inclined to grant searches for these seven individuals  
10 having looked at Exhibit G and reviewing Mr. Mule's  
11 rationale. I think it is a reasonable rationale. It  
12 just may be too cumbersome for the amount of data we're  
13 talking about.

14           So I'm also concerned that perhaps the search  
15 terms may generate too many responses. For example, the  
16 one that just says Don or Vic or Nick. That it may need  
17 additional search terms to limit it. But if you were to  
18 create a hot window, what would that be, Mr. Mule, in  
19 your opinion?

20           MR. MULE: Yeah. So your Honor, I guess it  
21 would depend on the particular search. And you know,  
22 even in SiteOne's date ranges, they had different dates  
23 with respect to different searches. So we could  
24 certainly do that exercise.

25           THE COURT: Well, it seems to me the time

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1 period you would be interested in, Mr. Gibbs, would be  
2 from your perspective is several months before. Right?  
3 Leading up to what happened.

4 MR. GIBBS: October. Starting October. To our  
5 view, the hot period is October of 2022 through late  
6 March, or April 1, 2023.

7 THE COURT: Right. And your hot period though,  
8 Mr. Mule, would probably postdate that because you want  
9 evidence of some kind of, you call it vengeance, I don't  
10 know, whatever you want to call it. Right? They're  
11 trying to get back at you guys because the deal went  
12 south.

13 MR. MULE: Yeah. Well, we would go back to  
14 October 2022 as well because in our view, they were  
15 planning to basically number one, get rid of Don. And  
16 then they were negotiating with him. And at the same  
17 time they're negotiating with him, they are plotting this  
18 lawsuit against him. So --

19 THE COURT: But what would that window -- from  
20 when to when is the window?

21 MR. MULE: So this would be like, you know, at  
22 least from sometime -- we have like -- because most of  
23 this, October 1, 2022 --

24 THE COURT: So okay, then to -- if your theory  
25 is going to bear fruit, right, it seems like you don't

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1 need two years of texts. I mean it could be -- unless  
2 the first -- if the first three months of texts let's  
3 say, I'm just picking a number, reveal exactly what you  
4 suspected and this whole thing was just a conspiracy,  
5 then it might makes sense to go through another three  
6 months to see how this conspiracy played out.

7 But on the other hand, if the first few months  
8 reveal absolutely nothing but what you'd expect in your  
9 normal asset purchase situation, it seems unlikely that a  
10 conspiracy would develop after the fact. You see what  
11 I'm saying?

12 MR. MULE: So I have one idea. Maybe if Mr.  
13 Milman can jump in? But as far as the -- I think there  
14 is a distinction between the texts and the emails so --

15 THE COURT: Meaning there'd be two different  
16 windows?

17 MR. MULE: Right.

18 THE COURT: Okay, okay.

19 MR. MULE: Exactly. So you know, to the extent  
20 we're talking about, you know, to try to cull down the  
21 universe and we talked about texts between the seven  
22 additional to have a total of ten for the texts --

23 THE COURT: But they already did the three,  
24 the --

25 MR. MULE: They did three, so seven more,

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1 getting a total of ten. And perhaps that could be a more  
2 limited time period from October 1, 2022 to sometime in  
3 2023 shortly after this lawsuit started. And that might  
4 be a more limited framing.

5 THE COURT: Well, here's what I'm prepared to  
6 give you. I'm prepared to give you four months. You can  
7 pick the four months. You said emails and texts may be  
8 different. But I'm prepared to grant the motion as to  
9 the seven additional individuals for a four-month period  
10 which you can get. Talk to your client or among the  
11 team.

12 MR. MULE: Okay.

13 THE COURT: And provide that to Mr. Gibbs, and  
14 he will conduct the search. If the search -- the top  
15 number was 204,000 I think you said, Mr. Gibbs, right?

16 MR. GIBBS: Well, I think -- so that's for --

17 THE COURT: For emails.

18 MR. GIBBS: Those are for emails. Yes, your  
19 Honor.

20 THE COURT: Okay. Why don't we continue to --  
21 we'll continue to break it down, do one sort of number  
22 for emails and one number for texts only because I have  
23 to be able to follow whatever you're going to submit.

24 MR. GIBBS: Yes, your Honor.

25 MR. MULE: Your Honor --

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1 MR. MILMAN: Your Honor, I just think the four-  
2 month period is limited. I'm going to say this, because  
3 we did get some responses from them last week. We had  
4 gone through a cursory review and --

5 THE COURT: Pull the mic towards you.

6 MR. MILMAN: What?

7 THE COURT: Pull the mic towards you so that  
8 you're recorded.

9 MR. MILMAN: Oh, I'm sorry. Sorry. Yeah. So  
10 we did get some responses last week. We've only had a  
11 limited period of time to go through them. But we have  
12 found some texts in January of 2023 which will support  
13 our theory of this case.

14 I think four months is problematic for us  
15 because if we start in October, that only takes us to  
16 February. We think these conversations probably started  
17 in October and went to maybe June.

18 THE COURT: Let me give you a caveat here. I'm  
19 inclined to give you the four months. If it produces  
20 essentially nothing, you're done. If it is a hotbed of  
21 information, then I would be inclined to listen to an  
22 application for more months,

23 MR. MULE: Well again, I too, like you --

24 THE COURT: Do you see what I'm saying though?

25 MR. MILMAN: Yeah, I do. But like you, I agree

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1 that I can't always count on what is being said in the  
2 courtroom as to what we are actually getting in  
3 documents. For example --

4 THE COURT: I don't understand what you mean by  
5 that.

6 MR. MILMAN: Well, what I mean by that is we  
7 did get a response from them and it's a text and it's one  
8 employee texting another but there's no reciprocating  
9 text from that other employee from his -- I'm pretty sure  
10 these were texts, right? Yeah. So I just think a longer  
11 period, I was going to say six months, three months  
12 before January and three months after.

13 THE COURT: The answer is four months. No.

14 MR. MILMAN: Okay.

15 THE COURT: Four months for now. Like I said,  
16 this is -- Judge Tomlinson used to do this a lot. We're  
17 sort of sampling to sort of keep the costs down. And if  
18 it turns out, Mr. Gibbs, your clients were behaving  
19 nefariously or with an ulterior motive, we're going to  
20 listen to this and I suspect you will --

21 MR. MILMAN: And they're searching deleted  
22 texts like we searched deleted texts (indiscernible),  
23 correct? It's all texts and (inaudible) --

24 THE COURT: It would be all --

25 MR. MILMAN: I just want to make sure.



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1 THE COURT: I don't know how texts are  
2 maintained as a matter of electronics. The search should  
3 include whatever is recoverable.

4 MR. MILMAN: Okay. And your Honor --

5 THE COURT: But let me -- if I don't start  
6 taking any type of notes, this isn't going to be worth a  
7 whole lot. So bear with me.

8 (Pause in proceedings)

9 THE COURT: Okay. So what's going to happen  
10 then is Mr. Gibbs, you'll do a search for the two three-  
11 month windows.

12 MR. MULE: Oh, I thought you said four-month  
13 windows.

14 THE COURT: Oh, I'm sorry, I did say four-month  
15 windows. I did. Sorry.

16 MR. MULE: Yes. And your Honor, I just want to  
17 make sure a couple of things. One, that's regarding  
18 texts.

19 THE COURT: Oh, I put four in.

20 MR. MULE: The search terms and the hit lists  
21 or what they have, they call it something else. But what  
22 they provided which referred to the 204,000 documents  
23 concerned emails. And so they already had 16 custodians  
24 total which they had collected the emails for I believe.

25 MR. GIBBS: 24.

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1 MR. MULE: 24. Okay. 24. And basically what  
2 we had wanted them to do, because what they did is for  
3 particular searches they had all right, we're going to do  
4 these two custodians here, we're going to do five  
5 custodians here. We said across the board we want you to  
6 run all the custodians for these particular searches.

7 So I just want to be clear that the searches  
8 for the emails is an entirely separate, you know, it's a  
9 separate endeavor.

10 THE COURT: No, that was it. You said the  
11 arguments were the same so I said the searches are the  
12 same.

13 MR. MULE: The arguments are the same. So if  
14 they collected all the texts and all the email and put it  
15 all in a database, they could run these searches, the  
16 same searches that we have.

17 THE COURT: Yes.

18 MR. MULE: However, you know, they still have  
19 to, for these particular searches, they still got to  
20 search the emails.

21 THE COURT: For the seven people.

22 MR. MULE: Not for the seven, for all the ones  
23 that they already have on their database plus the seven.

24 THE COURT: Mr. Gibbs? That's now what I  
25 understood it but that's --

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1 MR. GIBBS: I'm not following quite, your  
2 Honor. So I understand that you're ordering just talking  
3 about text messages, that there's a --

4 THE COURT: Well right now what I've drafted is  
5 an order that -- I've drafted an order that says Mr. Mule  
6 is going to give you two four-month windows, one for  
7 email, one for texts as to those seven additional  
8 custodians and you will search for terms as they request  
9 in Exhibit H as to those custodians during those windows.  
10 That's all the order says right now.

11 MR. GIBBS: That's right, and --

12 THE COURT: That's all I understood you to be  
13 asking for. So I'm not sure what we're talking about.

14 MR. GIBBS: Well, so I mean that's fine with  
15 me, your Honor. That's fine with me. I think -- I don't  
16 know that that's what they were talking about. But what  
17 you have described is fine with us.

18 THE COURT: Okay. But so let's see, Mr. Mule,  
19 what else are we talking about here?

20 MR. MULE: Yeah. So what we had proposed,  
21 there are some additional -- those seven names are going  
22 to be additional, or may be additional custodians. I'm  
23 not exactly sure. Mr. Gibbs could answer if they are  
24 additional custodians than what they had already included  
25 in the 24. So I don't know the answer to that.

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1 THE COURT: I don't understand what you're  
2 asking though. So there are 24 other custodians?

3 MR. MULE: No. They already had and collected  
4 the emails for 24 custodians.

5 THE COURT: And any of those the seven that  
6 we've already identified?

7 MR. MULE: That's what I'm not sure what the  
8 answer is. Some of them may be and some of them may not  
9 be.

10 THE COURT: Okay. Mr. Gibbs?

11 MR. GIBBS: I just need to see the --

12 THE COURT: It's fine. Take your time.

13 MR. GIBBS: -- the list of seven. I think the  
14 answer is yes.

15 THE COURT: It's in the exhibit -- it's docket  
16 entry 189 I think 7.

17 MR. GIBBS: Oh, 7? Dash 7?

18 THE COURT: 7.

19 MR. GIBBS: Okay. Let me see. Yep, I've got  
20 that. It's a list of the names.

21 THE COURT: And that's a longer list. The  
22 seven are -- do you have it in front of you, the exhibit?

23 MR. GIBBS: I do.

24 THE COURT: It's individuals one, two -- one  
25 through five, seven, and eight which is Alex Trama,

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1 Gerard Passaro, Phil Sausto, Doug Black, Brian  
2 Kersnowski, Jerry Justice, Kevin Peatie.

3 MR. GIBBS: Yes. Those seven individuals, we  
4 have collected their email data.

5 THE COURT: Okay. So you've already done that.

6 MR. GIBBS: It's been collected and searched.

7 MR. MULE: So what I'm saying is searching for  
8 the seven with respect to the texts, that's great.  
9 That's what we're asking for.

10 But with respect to the emails, we still need  
11 them to do their searches.

12 THE COURT: What does that mean?

13 MR. MULE: So the searches would be for all 24  
14 because they didn't search all 24 custodians in their  
15 original searches. Like I said, they sort of pick and  
16 choose between we're going to search these --

17 THE COURT: That's how they got 204,000  
18 responses.

19 MR. MULE: Right. By 204,000 responses, it was  
20 using our search terms for all 24.

21 THE COURT: Right.

22 MR. MULE: So as long as they do that for the  
23 emails as well --

24 THE COURT: No, that's what I'm telling you.  
25 204 -- the problem is that that's so much. I'm trying to

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1 come up with a scaled search that will at least get you a  
2 window into what's going on and allow you to test whether  
3 your theory holds up.

4 MR. MULE: Well, the seven is problematic  
5 because we don't know, those seven may be relevant for  
6 texts and particular searches but for a particular  
7 request for production and emails, there may be other  
8 people and they themselves conceded that.

9 THE COURT: There may be, but you need to -- we  
10 have to narrow this down in a way where you pick a  
11 limited number of people so that's less than 204,000.  
12 And if you get the email or part of an email chain that  
13 aha, well then you have a reason to come back to court  
14 and say well look, wait a minute, there's also these  
15 other eight people and they're clearly involved because  
16 look at this email. Okay, I'll listen to that. But a  
17 blanket search of 204,000 emails without the texts is a  
18 lot. And so I'm trying to get a way to get a more  
19 manageable number that still allows you to probe your  
20 theory.

21 MR. MULE: Yeah, I understand the intent, your  
22 Honor. I guess the question that I have is on their lone  
23 searches, they have for certain of the document requests,  
24 they might have had ten custodians that they themselves  
25 looked at and we said wait a minute, the searches that

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1 you did was inadequate, here's some additional, you know,  
2 search terms. But it should be applied, you know, to  
3 more than just the ten. But even that ten is more than  
4 the seven that we're talking about.

5 THE COURT: Well, they said they already -- did  
6 you already do it for the three, Mr. Gibbs, the last  
7 three on their list at 189-7?

8 MR. GIBBS: You mean the three that we  
9 collected texts for?

10 THE COURT: Right. Thistle, Ketter, and  
11 Catalano.

12 MR. GIBBS: So for those three, we didn't run  
13 search terms. We collected all of their texts between  
14 them on the one hand and any of the other 27 custodians  
15 for whom we collected data because they're the relevant  
16 people in the case that are really -- that's a full list  
17 of everybody that both sides have said oh, they might  
18 have some knowledge of the case.

19 THE COURT: Okay.

20 MR. GIBBS: And so we got those texts and we  
21 manually reviewed all of those. We did not apply search  
22 terms because that's what they did, so we did the same  
23 thing.

24 THE COURT: Okay. Well, maybe you need to use  
25 search terms then because manual review of all these

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1 texts seems like --

2 MR. GIBBS: Well, I think well, your Honor, if  
3 we're --

4 THE COURT: -- (inaudible). I don't know.

5 MR. GIBBS: If at this point we are talking  
6 about expanding our searching into seven other  
7 individuals, then I'm not suggesting that we should  
8 manually review all this.

9 THE COURT: Oh, okay.

10 MR. GIBBS: I am not. I was just telling you  
11 what we did for the 30.

12 THE COURT: Okay. Yes. I don't think I want  
13 that either. That doesn't seem like a good use of time.

14 MR. MULE: So your Honor, I guess, you know, as  
15 far as the emails, I mean one thing we could do is do a  
16 more limited time period with respect to these searches  
17 to get down from the 204,000 number.

18 THE COURT: Well, I've already done that. I  
19 told them you were going to give them a four-month  
20 window.

21 MR. MILMAN: But it should be for the 24  
22 people.

23 MR. MULE: But it should be for the 24 people  
24 that they, you know, that they've identified as people  
25 who are relevant custodians.



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1 THE COURT: You keep saying 24 people. Have  
2 you -- do you know who the 24 are?

3 MR. MULE: Yeah, we've identified custodians.  
4 We have 16 that we identified basically across the board  
5 on these particular searches for responses to particular  
6 requests. So we limit it to 16 on all of them. They did  
7 24. That's them. But we limited it to 16 on these  
8 numbers.

9 MR. GIBBS: I think I can explain, your Honor.

10 THE COURT: Great, because I have no idea  
11 what's going on.

12 MR. GIBBS: Okay. All right. So us, SiteOne,  
13 at the beginning of last July we go through and we think  
14 okay, who are all of the people -- there are sort of two  
15 buckets of people. Who are all the people who are  
16 involved with the deal, you know, back in 2020? Who are  
17 those people talking about the deal? And then those same  
18 people weren't necessarily involved with these particular  
19 locations that we purchased, the garden department  
20 locations. You know, some of those folks, for example,  
21 ones like the M&A guy for SiteOne, he doesn't deal with  
22 operations, right? So he's only relevant to the asset  
23 purchase agreement and the deal itself. Right?

24 So we got the bucket of people who are involved  
25 with the deal, and then more the people who are, you

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1 know, involved with the actual locations themselves. And  
2 so take both those buckets together and there are 24  
3 people that we identify, 24 total SiteOne employees.

4 THE COURT: Okay. How many of them are  
5 operations people?

6 MR. GIBBS: I'm not sure. I'd have to go back.  
7 It's been a long time since I looked at that.

8 THE COURT: Okay.

9 MR. GIBBS: But anyway, so there are a total of  
10 24. We then pulled those out and pulled all their emails  
11 I think back to eternity and then we applied date filters  
12 in the search software. So those 24 people, we searched  
13 their emails for it would be 24 total search terms and  
14 those are the best of 36,000 documents that we already  
15 reviewed. And so those are the -- that's the 24  
16 custodians. Those are the 24 people we're talking about  
17 that we searched for just generally responsive documents  
18 for the various RFPs.

19 THE COURT: And did you produce the responses?

20 MR. GIBBS: Yes. Yes, your Honor. They've all  
21 been produced. Yes. We reviewed 36,000 documents. We  
22 produced all of the email stuff September 6th of last  
23 year. It's been produced.

24 THE COURT: So then what else --

25 MR. MULE: The problem is, your Honor, and

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1 we've gone back to them a number of times is remember  
2 right at the beginning I said 60 percent of the document  
3 requests that we did they didn't even have search terms  
4 for. So that was like 60 out of 117 requests they had  
5 nothing. And then so we proposed these specific terms to  
6 specific document requests and said hey run them for your  
7 custodians.

8 MR. GIBBS: And I can explain that rationale  
9 exactly, your Honor. So there were 180 requests for  
10 production. Let me just say that. So it's not as though  
11 there were ten and we said oh, we're not going to search  
12 for five of them.

13 THE COURT: No, I get it.

14 MR. GIBBS: So a lot of the requests for  
15 production are things like, you know, they requests for  
16 example, financial data, financial information, financial  
17 reporting and information, documents related to the deal.  
18 You know, due diligence. Things like that.

19 THE COURT: Right.

20 MR. GIBBS: That stuff is not capable of -- you  
21 don't -- when we went and looked at the request, there's  
22 no -- we wouldn't search emails for this. We go and we  
23 find the actual documents --

24 THE COURT: And did you do that and produce  
25 them though?

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1 MR. GIBBS: Yes. Yes, your Honor.

2 THE COURT: So if I'm understanding you  
3 correctly, there were responses to the other requests,  
4 they're just not email responses and therefore not  
5 connected in your production.

6 MR. GIBBS: Exactly, your Honor. So when we  
7 created our request and then ran theirs last year in July  
8 and August, that was the purpose. A lot of them, yes,  
9 absolutely --

10 THE COURT: Okay.

11 MR. GIBBS: -- we said we don't think any  
12 documents exist and we can go through the specific RFPs.  
13 Our responses to a lot of them were we're not aware of  
14 any responsive documents. If we find any, we'll let you  
15 know. But for every single request they sent us, we did  
16 some type of searching. Either we went to employees and  
17 said hey, they've asked for these types of financial  
18 records, what do we have? Hey, they've asked for these  
19 deal documents, what do we have? We were pretty  
20 exhaustive in our searches. I mean we have produced a  
21 lot.

22 THE COURT: Okay.

23 MR. MULE: Your Honor, these requests that are  
24 on this chart, Exhibit H, concern communications.  
25 They're not concerning financial records. And that's

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1 where we said your custodian list was insufficient and  
2 your searches were insufficient. And that's why we said  
3 hey, we're proposing to run these search terms because  
4 prior hereto you haven't produced responsive documents to  
5 these particular document requests and we're entitled to  
6 responsive documents.

7 THE COURT: Okay. And you gave a list 1, 6,  
8 42, 55 --

9 MR. MULE: Yeah. So we have 22 and it's all --  
10 you know, these communications involving communications  
11 with -- and we identify specific allegations in the  
12 complaint too on a lot of these. So these are very  
13 granular requests.

14 THE COURT: What are you reading from when  
15 you're looking at that?

16 MR. MULE: I'm reading from Exhibit H which is  
17 189 --

18 THE COURT: No, no, dash 8.

19 MR. MULE: Dash 8, correct.

20 THE COURT: Okay. So pull up an example of  
21 that from that exhibit.

22 MR. MULE: Yeah, sure. So for example, if you  
23 go to the second page --

24 THE COURT: Yes.

25 MR. MULE: -- all documents referencing

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1 communication with or among SiteOne employees concerning  
2 the allegation in paragraph 56 of the complaint. And  
3 then 56, the amended complaint, is next to it.

4 THE COURT: Right.

5 MR. MULE: It states what that is. And then we  
6 came up with search terms proposed, repair and computer  
7 or laptop or desktop and drive because that's  
8 specifically what that particular allegation concerned.

9 The next one, it's a very similar thing  
10 concerning paragraph 57. And we culled out from the  
11 complaint allegations and sought --

12 THE COURT: No, let's just stick with the one  
13 example.

14 MR. MULE: Sure.

15 THE COURT: All right. So this -- let me just  
16 read paragraph 56 a minute. So you've 16 proposed  
17 custodians there and the search is repair and computer or  
18 laptop or desktop and drive. And you got no responses to  
19 that. That's a question, not a statement. Is that  
20 right? Is that what you're saying?

21 MR. MULE: Yes. So we didn't get a -- they  
22 didn't have any search term relative to that particular  
23 document request.

24 MR. GIBBS: So your Honor, we did. And that's  
25 why this is such an exercise. This is what

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1 demonstrates this is an exercise for us to just churn  
2 fees on this. So if you look at document 196-2 --

3 THE COURT: Okay, got it. What page?

4 MR. GIBBS: That's the -- it's just a --

5 THE COURT: No, it's a letter, but what page?

6 MR. GIBBS: Oh, I'm sorry. It's the last page.  
7 I'm sorry. So page 7 of 7. This is the list of the  
8 search terms that we ran. And if you look down towards  
9 the bottom there's Casper and laptop. It's run across a  
10 number of custodians again because this is --

11 THE COURT: Okay.

12 MR. GIBBS: -- this is dealing with a laptop  
13 that went missing that belonged to a lady named Rose  
14 Casper.

15 THE COURT: Okay.

16 MR. GIBBS: And so we searched. We want those  
17 documents. We have no reason to hide those. We want to  
18 know all we can about this particular laptop.

19 THE COURT: Okay. So what you did with respect  
20 to paragraphs -- did not run their search terms but you  
21 ran Casper and laptop for --

22 MR. GIBBS: Correct.

23 THE COURT: -- it looks like seven or six --

24 MR. GIBBS: Correct, your Honor. And a number  
25 of the -- the other issue is that a number of the

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1 searches, they overlap topically with other things that  
2 we've already done.

3 THE COURT: Right.

4 MR. GIBBS: And so it's coming at us from a  
5 perspective of let's look at every word in the complaint  
6 and let's run in essence like every word out of the  
7 complaint and see if we can find emails that hit on those  
8 terms. And we --

9 THE COURT: I understand that.

10 MR. GIBBS: And look, we really are, we're fine  
11 doing some additional searching. But I mean it's just  
12 got to be reasonable in scope considering what we've --  
13 the lengths we've really gone to to try and get them the  
14 documents.

15 THE COURT: Well, this is a question -- again,  
16 I'm not saying anybody hasn't gone to any lengths or  
17 anything like that. I'm trying to create a situation  
18 where defendants are allowed to test the theory --

19 MR. GIBBS: Sure.

20 THE COURT: -- in a sensible way. And if  
21 they're 100 percent correct, their testing will continue.  
22 But using the example you just pulled out at random, Mr.  
23 Mule, it seems pretty broad to me.

24 MR. MULE: Yeah. Well --

25 THE COURT: You're going to get a lot of false



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1 positives with something like that.

2 MR. MULE: Let me just point out for that they  
3 gave the preview documents to promote. It was 536  
4 document with respect to that particular example. So you  
5 know, that is not a really significant amount on that  
6 particular one. There are other ones that have a large  
7 amount. There's no doubt. Like the first one, number 22  
8 and 23, they came back and said for 22, which is all  
9 documents concerning communications among SiteOne  
10 employees concerning Don's non-compete, and that's, you  
11 know, concededly it's a broad search. We have Don  
12 Caroleo and non-competition or non-solicitation or  
13 compete or solicit. And that one it says for their  
14 preview documents to promote it was 60,000.

15 So I'm not saying that these search terms that  
16 we provided were perfect. This was our attempt. But we  
17 didn't get any response as far as how to --

18 THE COURT: I get it, I get it. But now we're  
19 going to drill down and we're going to create. So so far  
20 what you've got is a search of seven more custodians for  
21 emails --

22 MR. GIBBS: For texts.

23 THE COURT: -- and texts for a four-month  
24 period that you will select. I'm prepared to give that  
25 to you. I'm trying to listen to what you're saying that

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1 won't make the exception the rule kind of thing here if  
2 there's more that you would need to test it. But so far  
3 I haven't heard anything that makes me think that this  
4 order is insufficient, that if there's documents -- if  
5 there are other custodians outside the seven or the ten  
6 if you include the three, I will listen to that and you  
7 can explain why. But I'm not inclined (A), to expand the  
8 window at this moment --

9 MR. MULE: Well, your Honor, they've identified  
10 more than ten. You know, these particular -- we were  
11 looking for particular -- we were trying to compromise  
12 with respect to texts and say all right, for texts let's  
13 just view these particular people. But for emails among  
14 the company --

15 THE COURT: Look at the other, whatever the  
16 other remainder is (inaudible).

17 MR. MULE: Yeah.

18 THE COURT: And who is it that you think is  
19 going to have the smoking gun that would support your  
20 theory? Who else is there?

21 MR. MULE: Well, I mean they've identified 24.  
22 I mean if I'm going to cull down from 24 which they  
23 themselves provided, I'd have to talk with, you know,  
24 talk with my client.

25 THE COURT: Okay. Okay.

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1 MR. MULE: You know, if I could have some time  
2 to discuss it I guess.

3 THE COURT: Sure. Go take it right now.

4 MR. MULE: Okay. Great. Thank you.

5 THE COURT: How much time is -- ten minutes?  
6 You tell me.

7 MR. MULE: To what? To discuss? Yeah, sure.

8 THE COURT: How much time is enough? How much  
9 time do you need?

10 MR. MULE: Yeah, that should be enough.

11 THE COURT: Okay. So go into the attorney room  
12 where you can have some privacy.

13 MR. MULE: Okay. All right. Thank you.

14 THE COURT: And tell me who and approximately  
15 why. And then if it's for emails, or emails and texts  
16 also.

17 MR. MULE: Okay.

18 THE COURT: (Inaudible). Go ahead.

19 MR. GIBBS: Just really quick. So in terms  
20 of -- just so I think this may help their discussion as  
21 well and so that I'm clear, so at this point do you have,  
22 your Honor, in your mind what specific search terms would  
23 be run? Are you envisioning that we would run all of the  
24 ones that are in --

25 THE COURT: I'm envisioning running their

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1 search terms that they've identified in the column, the  
2 third column from the right on Exhibit H.

3 MR. GIBBS: Got it.

4 THE COURT: And I'm hoping that taking two  
5 years and making them four months will have a  
6 proportional limitation. And if you produce stuff that's  
7 nothing on nothing, then you're done.

8 MR. GIBBS: Understood.

9 THE COURT: Okay. Mr. Mule, you got that. Now  
10 you can go.

11 MR. MULE: Okay. Thank you.

12 (Off the record)

13 THE CLERK: All rise.

14 THE COURT: Please be seated. All right. Mr.  
15 Mule, what do you propose?

16 MR. MULE: All right, your Honor. So I've  
17 discussed --

18 THE COURT: You lost somebody too. What, you  
19 both cut somebody?

20 MR. MULE: He should be right here. We could  
21 start without him.

22 THE COURT: Yes.

23 MR. MULE: So for the total of ten, which is  
24 the seven additional to the three, what we would propose  
25 for the text is, you know, obviously we said four months.

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1 So what we would want to do is basically -- because the  
2 different requests pertain to different time periods and  
3 people -- so like for instance, Nick's termination is  
4 February, Don's termination is October, is to apply a  
5 separate four-month period for each request. It has the  
6 same affect of culling down the --

7 THE COURT: That's eight months.

8 MR. MULE: No, no. It's going to be for  
9 each -- they just run the search --

10 THE COURT: Oh, so you'll say for witness one,  
11 January and March.

12 MR. MULE: For request number 22, these four  
13 months. For request number 23, these four months.  
14 Because they're different topics. They're different time  
15 periods. And what that does is it gives the same exact  
16 goal of what your Honor wants which is to limit the time  
17 period, cull it down.

18 THE COURT: Yes. No, I get it. The math is  
19 the same is what you're saying.

20 MR. MULE: The math is the same. So that's  
21 what we propose on texts. Does that make sense?

22 THE COURT: Mr. Gibbs? The math is the same it  
23 sounds like, but --

24 MR. GIBBS: So let me make sure I understand.  
25 So -- and we're just talking about text messages.

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1 THE COURT: Basically, the way that I think to  
2 think of it is any search that's described will only be  
3 for a four-month period but search A may be for different  
4 search months from search B which may be different from  
5 search C, but still four months total.

6 MR. GIBBS: So each of the --

7 THE COURT: So theoretically the result is the  
8 same in terms of --

9 MR. GIBBS: So we would -- let me just make --  
10 let me think about this logistically. So we'll just take  
11 one for example, the very first one in their chart  
12 because I just want to make sure I totally understand.

13 THE COURT: Yes.

14 MR. GIBBS: So this one, there are 16 in the  
15 chart, there are 16 proposed custodians so --

16 THE COURT: Right, but we're not using that  
17 anymore.

18 MR. GIBBS: So that would be culled down to the  
19 list of the ten or the seven?

20 MR. MULE: Ten.

21 THE COURT: The ten, the ten. The three you  
22 have plus seven.

23 MR. MULE: Ten total for texts. We're talking  
24 texts only right now.

25 THE COURT: (Inaudible). It says October 1,

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1 2022 to the present. That would no longer be the case.

2 That could go from October 1 to February 1 I guess.

3 But then for the next one it could be February  
4 1 to June 1. No, March 1. No. Whatever. May 1.

5 MR. GIBBS: I'm sorry. What I was hearing was  
6 that so there are ten people. So the actual search, the  
7 proposed search terms are Don Caroleo and non-competition  
8 or non-solicitation or non-compete. So that search term  
9 is going to be run across ten people for the same four-  
10 month time period for each person?

11 THE COURT: For that one search.

12 MR. GIBBS: Yes.

13 THE COURT: Yes. But then if you go to the  
14 next search --

15 MR. GIBBS: But it's not -- but just to make  
16 sure I'm clear what it is not is for this first search  
17 term the proposed search terms, it's not those search  
18 terms for a different time period for each person.

19 THE COURT: Correct.

20 MR. MULE: No, it is not.

21 MR. GIBBS: Okay, okay. Got it, got it.

22 THE COURT: So that otherwise that would mean  
23 ten searches would become 40.

24 MR. MULE: Right.

25 MR. GIBBS: Got it.

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1 THE COURT: Maybe if I'm even understanding how  
2 this works. Okay. So --

3 MR. GIBBS: But there will be a different four-  
4 month -- what Mr. --

5 THE COURT: Could be.

6 MR. MULE: Could be.

7 MR. GIBBS: What Mr. Mule is proposing is each  
8 one or however, each search term will have a specific  
9 four-month period associated with it.

10 MR. MULE: That's correct.

11 THE COURT: Okay. Hold on. Let me just modify  
12 something.

13 MR. GIBBS: And your Honor, I think there are  
14 39 separate searches, so you're saying to run all 39  
15 terms?

16 THE COURT: Yes. Give me one second and then  
17 I'll circle back to you.

18 (Pause in proceedings)

19 THE COURT: Okay.

20 MR. MULE: Okay. So that settles the text  
21 issue. For emails --

22 THE COURT: Wait, you know what? (Inaudible).

23 MR. GIBBS: Okay.

24 THE COURT: Yes. Go ahead.

25 MR. GIBBS: So that was just, that's just for



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1 text messages.

2 MR. MULE: Okay. So for emails what we propose  
3 is this. The same ten plus four because they had  
4 identified 24.

5 THE COURT: Okay. (Indiscernible).

6 MR. MULE: So those four are Brian Hoffman --

7 THE COURT: Oh, I've got to write it down so  
8 just go slow.

9 MR. MULE: Anthony Farante, Taylor Koch.

10 THE COURT: Whoa, whoa, I'm writing, I'm  
11 writing. Hold on.

12 MR. MULE: Oh, I apologize.

13 THE COURT: Okay. What was the third one?

14 MR. MULE: Taylor Koch. It's Koch, Koch.

15 THE COURT: Spell it.

16 MR. MULE: K-O-C-H.

17 THE COURT: Got it.

18 MR. MULE: And the last one Briley Brisendine.

19 THE COURT: Spell it.

20 MR. MULE: B-R-I-S-E-N-D-I-N-E, Briley, B-R-I-  
21 L-E-Y.

22 MR. GIBBS: Your Honor, that is our general  
23 counsel.

24 THE COURT: How's that going to work?

25 MR. MULE: Well, he was involved I know in the

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1 early parts and not with the acquisition, not necessarily  
2 as a --

3 THE COURT: I'm inclined to allow it but he may  
4 just give a log of stuff that's all attorney-client  
5 privilege.

6 MR. MULE: If it is attorney-client, it is. If  
7 it's not an attorney-client communication, then it's not.

8 THE COURT: I'm inclined to allow it. You're  
9 waiving any rights as to him. I mean there's always  
10 argument that there's some non-privileged stuff from an  
11 attorney but are you sure you want to do that one?

12 MR. MULE: I'll double check with my client.

13 THE COURT: I mean it's okay with me. I just,  
14 I think there's a risk of basically giving up a slot I  
15 mean if there's another person who can sub in.

16 MR. GIBBS: Can I ask for one quick -- I don't  
17 want to --

18 THE COURT: Let him answer this question and  
19 then you can do it.

20 MR. GIBBS: Okay.

21 THE COURT: And I'm not trying to dissuade you.  
22 I just could see where it's like giving up a draft pick.  
23 Okay. Mr. Mule, you heard that? I'm not trying to  
24 dissuade you. I'm just concerned it might be a -- you  
25 might be buying something you don't want.

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1 MR. MULE: We'll stick with that. Thank you,  
2 your Honor.

3 THE COURT: Okay. I just need to add a note to  
4 the order.

5 (Pause in proceedings)

6 MR. MULE: Your Honor, can we have a moment,  
7 please?

8 (Off the record).

9 THE COURT: Okay. Now we're back on the  
10 record. I've added your full names to the searches.

11 MR. MULE: And I appreciate that, your Honor,  
12 and I would request after now speaking with the client,  
13 we'll just take Mr. Brisendine or Ms. Brisendine off the  
14 list.

15 THE COURT: Okay.

16 MR. MULE: So just three more.

17 THE COURT: Okay.

18 MR. GIBBS: So who are the, I'm sorry, who are  
19 the other --

20 THE COURT: It's Brian Hoffman, Taylor Koch,  
21 and -- wait a minute.

22 MR. MULE: Anthony Ferrante.

23 THE COURT: Thank you.

24 MR. GIBBS: And these three individuals, they  
25 are in addition to --

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1 MR. MULE: The ten.

2 THE COURT: The ten for emails. All right. So  
3 that's done.

4 MR. MULE: Okay.

5 MR. GIBBS: A couple of quick questions.

6 THE COURT: Yes.

7 MR. GIBBS: Just to clarify. I really don't  
8 want to have to come back and ask for clarification.

9 THE COURT: Me too.

10 MR. GIBBS: Okay. So on the text messages, the  
11 group of ten that you proposed, includes the three people  
12 for whom we've already collected and searched text  
13 messages?

14 THE COURT: The three people that you searched?  
15 Yes. Okay, yes.

16 MR. GIBBS: It would. So it's Greg Thistle,  
17 Joe Ketter and Anthony Catalano.

18 THE COURT: Yes.

19 MR. GIBBS: They would be three of the ten.

20 THE COURT: Correct.

21 MR. GIBBS: So I mean we pulled their text  
22 messages and manually reviewed those. Does your Honor  
23 still envision that we would re-search those?

24 THE COURT: Yes. No. If you've -- although  
25 no, because they have search terms now.

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1 MR. MULE: Search terms.

2 THE COURT: Run the search terms on the three.

3 MR. GIBBS: Run the search terms.

4 THE COURT: Yes is the answer to your question.

5 MR. MULE: Your Honor, one thing on the text  
6 messages, we provided -- we'd like to get from opposing  
7 counsel the total number of messages that are pulled  
8 within those search -- and the date range.

9 THE COURT: Well, you're going to get the date  
10 range.

11 MR. MULE: We're going to get the date range.  
12 But we want to know like first text, last text within  
13 those time periods.

14 MR. GIBBS: Well, your Honor, they have never  
15 provided that to us.

16 THE COURT: But they're going to search the  
17 date range and then --

18 MR. MULE: If they have one -- if they produce  
19 texts and they produce like one text, we don't know how  
20 many texts that person had during that time period.

21 THE COURT: You mean like the non-responsive?

22 MR. MULE: Exactly. And the quantity.

23 THE COURT: So you're asking basically for a  
24 hit count.

25 MR. MULE: Hit count essentially. How many?

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1 THE COURT: And then (indiscernible) if  
2 that's --

3 MR. GIBBS: Which is not something they've  
4 provided us, your Honor, just to be clear.

5 MR. MULE: Well, we did provide --

6 MR. GIBBS: We've asked for that. We've asked  
7 for that repeatedly and they've never given us that, so I  
8 don't know why we would do that.

9 THE COURT: Okay. If you do it for them or --  
10 and if you already produced it, you can just say see my  
11 letter of June 7th, but if you haven't then you've got to  
12 do it.

13 MR. MULE: What we provided, you know, we'll  
14 ask for the same.

15 THE COURT: Okay. (Indiscernible) but let me  
16 just add it to the order.

17 (Pause in proceedings)

18 THE COURT: Okay. So that's done. What else?

19 MR. MULE: I think that's it.

20 MR. GIBBS: Okay. So the same then, just to  
21 make sure I've got it clear, so we're going to run the  
22 same search terms across the email data and the text  
23 message data and the four-month period, it'll be a  
24 four-month period associated with each search term and  
25 that's it. Right?

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1 THE COURT: Yes, but the four months may change  
2 for different searches.

3 MR. MULE: Per request.

4 MR. GIBBS: Per request. That's right.

5 THE COURT: But yes. Otherwise yes.

6 MR. GIBBS: Okay. Got it.

7 THE COURT: And this will all be memorialized  
8 in an order that hopefully captures it. Yes, I think  
9 that's it.

10 MR. MULE: I think that's it.

11 MR. GIBBS: Those are all the motions, your  
12 Honor.

13 THE COURT: Go away.

14 MR. MULE: For now. Hopefully --

15 THE COURT: I need a few minutes --

16 THE CLERK: That's fine.

17 THE COURT: -- to make sure this is --

18 MR. MULE: Thank you, your Honor.

19 THE COURT: Have a good day, everybody.

20 MR. GIBBS: Yes. Thank you, your Honor.

21 (Off the record)

22 THE COURT: Okay. Mr. Mule, we're back on.

23 MR. MULE: The question is the time frame which  
24 we didn't get.

25 MR. GIBBS: Oh, that's right. Yes.

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1 THE COURT: Oh, okay. What makes sense that's  
2 reasonable?

3 MR. GIBBS: Well --

4 MR. MILMAN: How about the end of the month?  
5 Don't we have end of the month deadlines?

6 THE COURT: I'm asking what's reasonable. I'm  
7 not (indiscernible). That's reasonable.

8 MR. GIBBS: I think 60 days because we've got  
9 to collect data. The searches are not easy.

10 THE COURT: You don't even have to tell me why.  
11 60 days. 60 days, Mr. Mule?

12 MR. MULE: Yes.

13 THE COURT: Okay. Do you want to have a status  
14 conference after the 60 days?

15 MR. MULE: I think that makes sense.

16 THE COURT: All right. We'll pull up a date  
17 and give it to you.

18 THE CLERK: How about May 28th at 11:30?

19 THE COURT: May 28th at 11:30. What I'm going  
20 to suggest is I typically start conferences for 15  
21 minutes to 30 minutes. If you need more, let me know. I  
22 mean I can adjourn to give you more time, that's fine.  
23 But I rather you not make the trip and then we have to  
24 push you aside because I have six other conferences  
25 waiting. But ultimately it's up to you. We could also



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1 just put you at the end if it comes to that.

2 MR. GIBBS: I will actually be out of town on a  
3 family vacation that week, your Honor.

4 THE COURT: Okay. So let's pick another date.  
5 You can just take the family up here, you know. Take  
6 them out to the Hamptons.

7 MR. GIBBS: What's that?

8 THE COURT: Take them up here for vacation.  
9 Mr. Mule will show you a good time in the Hamptons.

10 MR. GIBBS: There you go. That's right.

11 THE CLERK: How about June 5th?

12 THE COURT: No, we can't do it then.

13 THE CLERK: How about June 12th at 10 a.m.

14 THE COURT: June 12th at 10 a.m. Yes? Mr.

15 Mule

16 MR. MULE: That's good by me, your Honor.

17 MR. GIBBS: Yes, your Honor. That's good on my  
18 end.

19 THE COURT: All right. We will see you all in  
20 June.

21 (Matter concluded)

22 -oOo-

23

24

25

C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 29th day of March, 2025.

A handwritten signature in cursive script, reading "Mary Greco", is written over a horizontal line.

Transcriptions Plus II, Inc.